

HOUSE BILL 3210
By Moore

AN ACT to amend Tennessee Code Annotated, Title 39,
Chapter 15, Part 4 and Title 57, Chapter 5, relative
to sale of beer for off-the-premises consumption.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 57, Chapter 5, is amended by adding
Sections 2 through 10 of this act as a new, appropriately designated part.

SECTION 2. This part shall be known and may be cited as the "Tennessee Responsible
Vendor Act of 2006".

SECTION 3. It is the intent of the legislature through the provisions of this part:

- (1) To eliminate the sale of beer for off-the-premises consumption to, and
consumption of beer by, under aged persons;
- (2) To reduce intoxication and to reduce accidents, injuries, and deaths in the
state which are related to intoxication; and
- (3) To encourage vendors to be prudent in their selling practices of beer and to
restrict or reduce the sanctions that may be imposed in administrative proceedings by
the department and local beer boards against those vendors who comply with
responsible practices in accordance with this part.

SECTION 4. As used in this part, unless the context otherwise requires:

- (1) "Beer" has the same meaning as such word is defined in §57-5-101(b).
- (1) "Department" means the department of agriculture; and
- (2) "Vendor" means a person who has been issued a permit to sell beer for off-
the-premises consumption.

SECTION 5. The department of agriculture shall establish or cause to be established a responsible vendors program designed to encourage vendors and their employees and customers to treat beer in a responsible manner. The program must include, without limitation, comprehensive instruction on the prevention of the sale of beer to persons not of legal age.

SECTION 6.

(a) A vendor who seeks to qualify as a responsible vendor must provide to the department, pursuant to procedures adopted by the department, evidence of compliance with the requirements of this part. Upon satisfactory proof that the vendor has complied with such requirements, the department shall certify the vendor as a responsible vendor. Certification as a responsible vendor shall be renewed annually.

(b) The department shall adopt rules and regulations for monitoring compliance by certified vendors and for revoking or suspending a vendor's certification for noncompliance with this section. The department is hereby authorized to utilize non-law enforcement personnel to monitor and enforce compliance with this part.

SECTION 7.

In order to qualify for certification, the vendor shall comply with the following requirements:

(1) Provide a course of instruction for its employees approved by the department which shall include subjects dealing with beer as follows:

- (A) Laws regarding the sale of beer for off-the-premises consumption;
- (B) Methods of recognizing and dealing with underage customers; and
- (C) The development of specific procedures for refusing to sell beer to underage customers; for assisting employees in dealing with underage customers; and for dealing with intoxicated customers;

(2)

(A) Require each employee who is authorized to sell beer in the normal course of the employee's employment to complete the employee training course set out in subdivision (1) within thirty (30) days of commencing employment;

(B) Each employee must complete the training and receive a certificate of completion issued by the employer, in accordance with rules promulgated by the department; no employee shall be authorized to sell beer unless the employee has completed the training and has been issued the certificate; such certificate shall be displayed in a visible place behind the counter; and

(C) In addition to receiving the certificate of completion, the employee shall be issued a card that the employee shall keep on the employee's person when acting in the employee's capacity as a sales clerk at a business where beer is sold;

(3) Require all such trained employees to attend additional meetings at least semiannually or such other schedule of meetings as may be approved by the department, which meetings shall include the dissemination of existing and new information covering the applicable subjects specified in this section and explaining the vendor's policies and procedures relating to those subjects;

(4) Maintain employment records of the training of its employees required by this section; and

(5) Post signs on the vendor's premises informing customers of the vendor's policy against selling beer to underaged persons. Such signs shall be not less than 8-1/2" x 11" and contain the following language:

STATE LAW REQUIRES IDENTIFICATION FOR THE SALE OF BEER.

SECTION 8.

(a) If probable cause exists that an employee sold beer to a minor in violation of §57-5-301(a) and a law enforcement officer cites the employee for such a violation, the law enforcement officer shall take the employee's card at the time the citation is issued and notify the employer that such action was taken.

(b) The card shall be forwarded to the department by the law enforcement officer and the department shall schedule a hearing within ten (10) days of receiving the card from the law enforcement officer to determine whether the person's certificate shall be revoked.

(c) If the employee pleads guilty to, or is found guilty of, violating §57-5-301(a), or if, following a hearing, the department determines that the employee's certificate should be revoked, such person shall not be eligible for a period of one (1) year following the conviction or such decision by the department to reapply for training with any employer to sell beer.

SECTION 9.

(a) The permit of a vendor certified as a responsible vendor under this part may not be suspended or revoked by a county legislative body or committee or board created by a county legislative body for an employee's illegal sale of beer to a person who is not of lawful drinking age if the employee had completed the applicable training prescribed by this part prior to committing such violation, unless the vendor had knowledge of the violation or should have known about such violation, or participated in or committed such violation. No vendor may use as a defense to decertification the fact that the vendor was absent from the premises at the time of noncompliance with this section.

(b) The department shall consider certification by a vendor in the responsible vendors program in mitigation of administrative penalties or fines for an employee's illegal sale of beer to a person who is not of lawful drinking age.

SECTION 10.

(a) There is hereby imposed on each vendor who has been issued a permit to sell beer for off-the-premises consumption, and applies for certification as a responsible vendor, a fee of thirty-five dollars (\$35.00) payable upon the issuance or renewal of such certification. In addition, at the time of the issuance or renewal of such certification each such vendor shall pay twenty-five dollars (\$25.00) for each store location, owned or operated by such vendor, which sells beer for off-the-premise consumption.

(b) Such fees shall be deposited by the department in a special agency account in the state general fund to be known as the "responsible vendor certification fund," hereinafter referred to in this part as the "fund."

(c) Any fund balance remaining unexpended at the end of a fiscal year in the fund shall be carried forward into the subsequent fiscal year and shall continue to be preserved for the administration of the vendor certification program.

(d) Interest accruing on investments and deposits of the fund shall be carried forward into the subsequent fiscal year.

(e) Moneys in the fund shall be invested by the state treasurer in accordance with the provisions of §9-4-603. The fund shall be administered by the commissioner of agriculture.

(f) Moneys in the fund shall only be expended and obligated in accordance with appropriations made by the general assembly for the purposes as provided in this part.

SECTION 11. Tennessee Code Annotated, Section 57-5-108(a)(2)(A), is amended by deleting the first sentence in its entirety, by substituting instead the following language, and by designating the remaining language as subdivision (iii):

(i) A city, Class A county, or Class B county, or any committee, board, or commission created by such governmental bodies, shall not, pursuant to Section 8(a), revoke or suspend the permit of a vendor for an employee's illegal sale of beer to a

minor if the permit or license holder and the employee making the sale have complied with the requirements of Section 8 as a certified participant under this part, but may impose on such vendor a civil penalty not to exceed one thousand dollars (\$1,000) for each offense of making or permitting to be made any sales to minors or for any other offense.

(ii) Provided that the prohibition of subdivision(a)(2)(A)(i) concerning the revocation or suspension of the vendor's permit shall not apply to any vendor who is not a certified participant under this part or to a participating vendor if the vendor or employee making a sale to a minor fail to comply with the requirements of Section 8. With respects to such permit or license holders, such committee board or commission may, at the time it imposes a revocation or suspension, offer the permit or license holder the alternative of paying a civil penalty not to exceed twenty five hundred dollars (\$2,500) for each offense of making or permitting to be made any sales to minors, or a civil penalty not to exceed one thousand dollars (\$1,000) for any other offense.

SECTION 12. Tennessee Code Annotated, Section 57-5-301(a)(1), is amended by adding the following language after the first sentence.

Prior to making a sale of beer for off-the-premises consumption, the adult consumer must present to the permit holder or any employee thereof a valid, government-issued document, or other form of identification deemed acceptable to the permit holder, which includes the photograph and birth date of the adult consumer attempting to make such purchase of beer. The permit holder or employee shall make a determination from the information presented whether the purchaser is an adult. In addition to the prohibition of making a sale to a minor, no sale of beer for off-the-premises consumption shall be made to a person who does not present such a document or other form of identification to the permit holder or any employee thereof.

SECTION 13. Tennessee Code Annotated, Section 39-15-413, is amended by adding the following language as a new subsection as follows:

(d)(1) No prosecution for the violation of any statute prohibiting the sale of beer for off-the-premises consumption to a person under twenty-one (21) years of age, shall be commenced if such prosecution is based upon the use of a person under twenty-one (21) years of age as authorized by this section unless such person obtains the name of the permit holder or the employee of the permit holder from whom the beer was purchased or attempted to be purchased. In addition, within five (5) days of the date such action occurred, the law enforcement officer shall notify the permit holder in writing either by mail or hand delivery indicating:

(A) That an action recently occurred in which a person under twenty-one (21) years of age was used to purchase or attempt to purchase beer for off-the-premises consumption;

(B) The date and location of the action;

(C) The name of the permit holder or the employee from whom the beer was purchased or attempted to be purchased; and

(D) Whether the person was successful in making the purchase.

(2) If such person under twenty-one (21) years of age was unsuccessful in making such a purchase, no further actions otherwise authorized by this section to use a person under twenty-one (21) years of age to purchase or attempt to purchase beer for off-the-premises consumption may occur at such location for at least a ninety-day period following the issuance of such written notification.

SECTION 14. For the purpose of promulgating rules and regulations to effectuate the purposes of this act, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2006, the public welfare requiring it.

